

भारत का राजपत्र

The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—अण्ड 1

PART II—Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० १७२] नई विलासी, बृहस्पतिवार, विसम्बर ३०, १९७६/पौष ९, १८९८
No. १७२] NEW DELHI, THURSDAY, DECEMBER ३०, १९७६/ PAUSA ९, १८९८

इस भाग में भिन्न पुष्ट संख्या दी जाती है जिससे कि यह ग्राम संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 30th December, 1976

THE CALTEX [ACQUISITION OF SHARES OF CALTEX
OIL REFINING (INDIA) LIMITED AND OF THE
UNDERTAKINGS IN INDIA OF CALTEX (INDIA)
LIMITED] ORDINANCE, 1976

No. 15 OF 1976

Promulgated by the President in the Twenty-seventh Year
of the Republic of India.

An Ordinance to provide, in the public interest, for the acquisition of the shares of Caltex Oil Refining (India) Limited and for the acquisition and transfer of the right, title and interest of Caltex (India) Limited in relation to its undertakings in India and thereby to secure that the ownership and control of the petroleum products produced by the Caltex Oil Refining (India) Limited, and marketed and distributed by the said undertakings, in India, are so distributed as best to subserve the common good.

WHEREAS the Caltex Petroleum Corporation (a foreign company) has at present the ownership of, and control over, a significant portion of the petroleum products produced, marketed and distributed in India by reason of the fact that one of its subsidiaries, namely, the Caltex Oil Refining (India) Limited (an Indian company), is carrying on the business of refining crude oil and producing petroleum products in India and another of its subsidiaries, namely, the Caltex (India) Limited (a foreign company), is carrying on through its undertakings in India the business of marketing and distributing petroleum products;

AND WHEREAS it is expedient in the public interest that the shares of the said Caltex Oil Refining (India) Limited and the undertakings in India of the said Caltex (India) Limited should be acquired;

AND WHEREAS such acquisition is for giving effect to the policy of the State towards securing the principle specified in clause (b) of article 39 of the Constitution as the ownership and control of the material resources of the community, to wit the petroleum products produced by the said Caltex Oil Refining (India) Limited and marketed and distributed by the undertakings of the said Caltex (India) Limited, in India, would by reason of such acquisition become vested in the State and thereby so distributed as best to subserve the common good;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance: —

CHAPTER I

PRELIMINARY

**Short title
and com-
mence-
ment.**

1. (1) This Ordinance may be called the Caltex [Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited] Ordinance, 1976.

(2) It shall come into force at once.

**Defini-
tions.**

2. In this Ordinance, unless the context otherwise requires,—

(a) "appointed day" means the date on which this Ordinance comes into force;

(b) "Caltex (India)" means the Caltex (India) Limited, a foreign company within the meaning of section 591 of the Companies Act, 1956, incorporated in Bahamas Islands and having its registered office 1 of 1956, in the City of Nassau in the Island of New Providence;

(c) "Caltex Oil Refining" means the Caltex Oil Refining (India) Limited, being a company as defined in the Companies Act, 1956, and 1 of 1956, having its registered office at Shoorji Vallabhdass Marg, Bombay;

(d) "Caltex Petroleum" means the Caltex Petroleum Corporation, a company incorporated in the State of Delaware in the United States of America and having its principal business office at 380, Madison Avenue, New York, United States of America;

(e) "Government company" means a company as defined in section 617 of the Companies Act, 1956;

(f) "notification" means a notification published in the Official Gazette;

(g) "prescribed" means prescribed by rules made under this Ordinance.

1 of 1956.

CHAPTER II

ACQUISITION OF THE SHARES OF CALTEX OIL REFINING

3. (1) On the appointed day, all the shares in the capital of Caltex Oil Refining shall, by virtue of this Ordinance, stand transferred to, and vested in, the Central Government.

(2) All the shares which have vested in the Central Government under sub-section (1) shall, by force of such vesting, be freed and discharged of all trusts, liabilities, obligations, mortgages, charges, liens and other encumbrances affecting them.

(3) Any dividend payable by Caltex Oil Refining in respect of any period beginning from the 1st day of January, 1976, shall be payable to the Central Government.

4. (1) For the purpose of enabling Caltex Oil Refining to function as a Government company, the Central Government may, by notification, make such amendments in the memorandum and articles of association of that company and such other provisions as it may consider necessary.

(2) Any amendments in the memorandum and articles of association of Caltex Oil Refining and any other provisions made under sub-section (1) shall have effect notwithstanding anything contained in the Companies Act, 1956.

1 of 1956.

CHAPTER III

ACQUISITION OF THE UNDERTAKINGS OF CALTEX (INDIA) IN INDIA

5. On the appointed day, the right, title and interest of Caltex (India) in relation to its undertakings in India shall, by virtue of this Ordinance, stand transferred to, and shall vest in, the Central Government.

6. (1) The undertakings of Caltex (India) referred to in section 5 shall be deemed to include all assets, rights, powers, authorities and privileges and all property, movable and immovable, cash balances, reserve funds, book debts, investments and all other rights and interests in, or arising out of, such property as were, immediately before the appointed day, in the ownership, possession, power or control of Caltex (India), in relation to its undertakings in India, and all books of account, registers, records and all other documents of whatever nature relating thereto and shall also be deemed to include all borrowings, liabilities (including the liability for the payment of any pension and other pensionary benefits to the persons employed in relation to its undertakings in India) and obligations of whatever kind then subsisting of Caltex (India) in relation to its undertakings in India :

Provided that remittances outside India of any money for the payment of pension or other pensionary benefits shall be subject to the rules and

regulations for the time being in force in relation to such remittances.

(2) The profits earned by Caltex (India) in relation to its undertakings in India from the 1st day of January, 1976 shall be payable to the Central Government.

(3) Unless otherwise expressly provided by this Ordinance, all deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature in relation to the undertakings of Caltex (India) in India subsisting or having effect immediately before the appointed day, and to which Caltex (India) is a party or which are in favour of Caltex (India) shall be of as full force and effect against or in favour of the Central Government and may be enforced or acted as fully and effectually as if in the place of Caltex (India), the Central Government had been a party thereto or as if they had been issued in favour of the Central Government.

(4) If on the appointed day, any suit, appeal or other proceeding of whatever nature in relation to the undertakings of Caltex (India) in India, which have been transferred to and vested in the Central Government under section 5, is pending by or against Caltex (India), the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertakings of Caltex (India) in India or of anything contained in this Ordinance but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Central Government.

Special provisions as to certain rights and interests held by Caltex (India) before the appointed day.

7. (1) Every right or interest in respect of any property in India (including a right under any lease or under any right of tenancy or any right under any arrangement to secure any premises for any purpose) which Caltex (India) held immediately before the appointed day, shall, notwithstanding anything contained in any other law or in any agreement or instrument relating to such right or interest, vest in, and be held by, the Central Government on and after the appointed day on the same terms and conditions on which Caltex (India) would have held it, if no negotiations had taken place for the acquisition by the Central Government of the undertakings of Caltex (India) in India or, as the case may be, if this Ordinance had not been promulgated.

(2) If at any time after the 2nd day of February, 1974 (being the date on which the Central Government's policy for acquiring undertakings engaged in the production, marketing or distribution of petroleum products was made known) and before the commencement of this Ordinance, Caltex (India) surrendered or otherwise relinquished any right or interest in respect of any property in India (including a right under any lease or under any right of tenancy or a right under any arrangement to secure any premises for any purpose), then, for the purposes of this Ordinance, notwithstanding anything contained in any other law or in any agreement or instrument relating to such right or interest, the Central Government shall, on and after the appointed day, be entitled to such right or interest on the same terms and conditions on which Caltex (India) would have been entitled to such right or interest if it had not surrendered or otherwise relinquished such right or interest and this Ordinance had not

been promulgated.

Provided that nothing in this sub-section shall apply to any right or interest surrendered or otherwise relinquished by Caltex (India) before the commencement of this Ordinance for sufficient monetary consideration.

(3) On the expiry of the term of any lease, tenancy or arrangement referred to in sub section (1) or sub-section (2), such lease or tenancy or arrangement shall, if so desired by the Central Government, be renewed or continued so far as may be, on, the same terms and conditions on which the lease or tenancy or arrangement was originally granted or entered into.

8. (1) For the removal of doubts, it is hereby declared that the provisions of sections 5, 6 and 7 shall apply to the extent to which any property appertains to the business carried on by Caltex (India) in India; and to the rights and powers acquired, and to debts, liabilities and obligations incurred, and to contracts, agreements and other instruments made, by Caltex (India) in India, and to legal proceedings relating to those matters pending in any court or tribunal in India.

Removal
of
doubts.

(2) If any question arises as to whether any property appertained, immediately before the appointed day, to any business of Caltex (India) in India, or whether any rights, powers, debts, liabilities or obligations were acquired or incurred or any contract, agreement or other instrument was made by Caltex (India) for the purposes of its business in India, or whether any documents relate to those purposes, or whether the provisions of section 7 apply in relation to any property, the question shall be referred to the Central Government which shall, after giving an opportunity of being heard to the persons interested in the matter, decide it in such manner as it may think fit.

9. (1) Notwithstanding anything contained in sections 5, 6 and 7, the Central Government may, if it is satisfied that a Government company is willing to comply, or has complied, with such terms and conditions as that Government may think fit to impose, direct by notification, that the right, title and interest and the liabilities of Caltex (India) in relation to any of its undertakings in India shall, instead of continuing to vest in the Central Government, vest in the Government company either on the date of the notification or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the notification.

Power of
Central
Govern-
ment to
direct
vesting
of the
under-
takings of
Caltex
(India)
in a
Govern-
ment
company.

(2) When the right, title and interest and the liabilities of Caltex (India) in relation to its undertakings in India vest in a Government company under sub-section (1), all the rights and liabilities of the Central Government in relation to such undertakings shall, on and from the date of such vesting, be deemed to have become the rights and liabilities, respectively, of the Government company.

(3) The provisions of sections 5, 6 and 7 shall, so far as may be, apply in relation to such Government company as they apply in relation to the Central Government and for this purpose references therein to the "Central Government" shall be construed as references to such Government company.

CHAPTER IV

PAYMENT OF AMOUNT

Payment
of
amount
to Caltex
Petroleum
and
Caltex
(India).

10. (1) For the transfer to and vesting in the Central Government under section 3 of the shares of Caltex Oil Refining and for the transfer to and vesting in the Central Government under section 5 of the right, title and interest of Caltex (India) in relation to its undertakings in India, there shall be paid by the Central Government an aggregate amount of rupees thirteen crores to Caltex Petroleum and Caltex (India) in the proportions agreed to by them.

(2) The amount specified in sub-section (1) shall carry interest free of income-tax at the rate of eight per cent. per annum from the 1st day of January, 1977, till the date of payment in the manner specified in the Schedule.

(3) The amounts payable under sub-sections (1) and (2) shall be payable in instalments in accordance with the provisions of the Schedule.

(4) In addition to the amounts mentioned in sub-sections (1) and (2), the Central Government shall pay to Caltex Petroleum or Caltex (India), as the case may be, such amount in Indian currency as may be required by the said companies to pay towards all taxes in India on the amounts payable under the said sub-sections and all other taxes in India the liability for the payment of which arises directly on the transfer to and vesting in the Central Government of the shares of Caltex Oil Refining and of the undertakings of Caltex (India) in India.

CHAPTER V

PROVISIONS RELATING TO EMPLOYEES

Transfer
of service
of exist-
ing em-
ployees of
Caltex
(India),
etc.

11. (1) Every whole-time officer or other employee of Caltex (India) who was, immediately before the appointed day, employed by Caltex (India) in connection with its undertakings in India, and every whole-time officer or other employee of Caltex (India) who was, immediately before the appointed day, temporarily holding any assignment outside India shall, on the appointed day, become an officer or other employee, as the case may be, of the Central Government or the Government company (hereinafter referred to as the successor Government company) in which the right, title and interest of Caltex (India) in relation to its undertakings in India have vested under this Ordinance and shall hold office or service under the Central Government or the successor Government company, as the case may be, on the same terms and conditions and with the same rights to pension, gratuity and other matters as would have been admissible to him if there had been no such vesting and shall continue to do so unless and until his employment under the Central Government or the successor Government company is duly terminated or until his remuneration and conditions of service are duly altered by the Central Government or the successor Government company.

(2) Subject to rules made in this behalf under section 23, every whole-time officer or other employee of Caltex Oil Refining who was, immediately before the appointed day, employed by Caltex Oil Refining in India, and every whole-time officer or other employee of Caltex Oil Refining who was, immediately before the appointed day, temporarily holding

any assignment outside India shall, on and from that day, continue to be an officer or other employee of Caltex Oil Refining on the same terms and conditions and with the same rights to pension, gratuity and other matters as are admissible to him immediately before that day and shall continue to hold such office unless and until his employment under the Caltex Oil Refining is duly terminated or until his remuneration and conditions of service are duly altered by that company.

(3) If any question arises as to whether any person was a whole-time officer or other employee of Caltex (India), or as to whether any officer or other employee was employed wholly or mainly in connection with the undertakings of Caltex (India) in India immediately before the appointed day, or whether any whole-time officer or other employee of Caltex (India) was temporarily holding any assignment outside India, the question shall be referred, within a period of two years from the appointed day, to the Central Government which shall, after giving an opportunity of being heard to the person concerned in the matter, decide it in such manner as it thinks fit and such decision shall be final.

<sup>14 of 1947.
39 of 1972.</sup> (4) Notwithstanding anything contained in the Industrial Disputes Act, 1947, the Payment of Gratuity Act, 1972, or in any other law for the time being in force, the transfer of the services of any officer or other employee under sub-section (1) shall not entitle any such officer or other employee to any compensation or gratuity under those Acts or such other law, and no such claim shall be entertained by any court, tribunal or other authority.

12. (1) Where a provident, superannuation, welfare or other fund has been established by Caltex (India) for the benefit of the persons employed by it in connection with its undertakings in India, the moneys relatable to the employees—

(i) whose services are transferred by or under this Ordinance to the Central Government or the successor Government company, or

(ii) who are in receipt of pension or other pensionary benefits immediately before the appointed day,

shall, out of the moneys standing, on that day, to the credit of such provident, superannuation, welfare or other fund stand transferred to, and vested in, the Central Government or the successor Government company, as the case may be, free from any trust that may have been constituted by Caltex (India) in respect thereof.

(2) The moneys which stand transferred, under sub-section (1), to the Central Government or the successor Government company shall be dealt with by the Central Government or that company, as the case may be, in such manner as may be prescribed.

(3) The successor Government company shall, as soon as may be after the undertakings of Caltex (India) in India become vested in it, constitute, in respect of the moneys and other assets which are transferred to, and vested in, it under this section, one or more trusts having objects as similar to the objects of the existing trusts, as in the circumstances may be practicable, so, however, that the rights and interests of the beneficiaries of the trust referred to in sub-section (1) are not, in any way, prejudiced or diminished.

(4) Where all the moneys and other assets belonging to an existing trust are transferred to, and vested in, the Central Government or the

successor Government company under this section, the trustees of such trust shall, as from the date of such vesting, stand discharged from the trust except as respects things done or omitted to be done before the date of such vesting.

CHAPTER VI

MISCELLANEOUS

**Effect of
Ordi-
nance on
other
laws.**

13. The provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Ordinance or in any decree or order of any court, tribunal or other authority.

**Duty to
deliver
possession
of proper-
ties, etc.**

14. (1) Where any property, appertaining to any undertaking of Caltex (India) in India has been transferred to, and vested in, the Central Government or the successor Government company under this Ordinance,—

(a) every person in whose possession, custody or control any such property may be, shall, on a demand by the Central Government or the successor Government company, as the case may be, deliver the property to the Central Government or the successor Government company, as the case may be, forthwith;

(b) any person who, immediately before such vesting, has in his possession, custody or control any books, documents or other papers relating to the undertakings of Caltex (India) in India, shall be liable to account for the said books, documents and papers to the Central Government or the successor Government company, as the case may be, and shall deliver them up to the Central Government or that company or to such person as the Central Government or that company may authorise in this behalf.

(2) Without prejudice to the other provisions contained in this section, it shall be lawful for the Central Government or the successor Government company to take all necessary steps for taking possession of all properties, which have been transferred to, and vested in, it under this Ordinance.

**Contracts
to con-
tinue un-
less termi-
nated by
Central
Govern-
ment.**

15. (1) Every contract entered into by Caltex (India) for any service, sale or supply in India, and in force immediately before the appointed day, shall, unless terminated under sub-section (2), within a period of two years from the appointed day, continue to be of full force and effect against or in favour of the Central Government or, as the case may be, the successor Government company in which the undertakings of Caltex (India) in India have vested under this Ordinance.

(2) The Central Government may, if it is satisfied that any contract referred to in sub-section (1) is unduly onerous or has been entered into in bad faith or is detrimental to the interests of that Government or the successor Government company, as the case may be, by order in writing, either terminate such contract or make such alterations or modifications therein as it may think fit:

Provided that the Central Government shall not terminate any contract or make any alteration or modification therein except after giving

to the parties to the contract, a reasonable opportunity of being heard and except after recording in writing, its reasons for such termination, alteration or modification as the case may be.

16. Nothing in this Ordinance shall be construed to entitle Caltex Oil Refining or the Central Government or the successor Government company to use—

(a) any designs, trade marks, trade names (including the name Caltex or any part thereof), styles of labelling, belonging to Caltex Petroleum or Caltex (India), after the expiry of a period of twelve months from the appointed day; and

(b) any station decor (including distinctive colour schemes) belonging to Caltex Petroleum or Caltex (India), after the expiry of a period of twenty-four months from the appointed day.

17. Any person who,—

Use of designs, trade marks etc. belonging to Caltex Petroleum or Caltex (India).

Penalties.

(a) having in his possession, custody or control any property forming part of any undertaking of Caltex (India) in India wrongfully withdraws such property from the Central Government or the successor Government company; or

(b) wrongfully obtains possession of or retains any property forming part of any undertaking of Caltex (India), in India; or

(c) wilfully withdraws or fails to furnish to the Central Government or the successor Government company or any person specified by the Central Government or that company, any books, documents or other papers relating to any undertaking of Caltex (India) in India which may be in his possession, custody or control; or

(d) fails to deliver to the Central Government or the successor Government company, any assets, books of account, registers or other documents in his possession, custody or control relating to any undertaking of Caltex (India), in India; or

(e) wrongfully removes or destroys any property forming part of any undertaking of Caltex (India), in India; or

(f) wrongfully uses any property forming part of any undertaking of Caltex (India), in India,

shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ten thousand rupees, or with both.

18. (1) Where an offence under this Ordinance has been committed by a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences by companies.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Ordinance has been committed by a company and it is

proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.—*For the purposes of this section—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

Protection
of action
taken in
good
faith.

19. No suit, prosecution or other legal proceeding shall lie against the Central Government or the successor Government company or any of its officers or other employees for anything which is in good faith done or intended to be done under this Ordinance.

Cognizance
of offen-
ces.

20. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no court shall take cognizance of any offence against this Ordinance except on a complaint, in writing, made by the Central Government or any officer authorised in this behalf by that Government.

Indemnity.

21. Every officer of the Central Government and every officer or other employee of the successor Government company shall be indemnified by the Central Government or the successor Government company, as the case may be, against all losses and expenses incurred by him in, or in relation to, the discharge of his duties under this Ordinance except such as have been caused by his own wilful act or default.

Power
to remove
difficul-
ties.

22. If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order, not inconsistent with the provisions of this Ordinance, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the appointed day.

Power
to make
rules.

23. (1) The Central Government may, by notification, make rules to carry out the provisions of this Ordinance.

(2) Every rule made by the Central Government under this Ordinance shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

THE SCHEDULE

[See section 10]

1. The amount specified in sub-section (1) of section 10 shall be deemed to correspond to fourteen million, five hundred and sixty thousand dollars (hereafter in this Schedule referred to as the principal amount).
2. The amount referred to in the foregoing paragraph and the interest due thereon shall be paid in instalments in accordance with the provisions of the Table below, namely:—

Date of payment	Instalments in dollars		
	Principal amount	Interest	Total
(i) 31-3-1977	10,080,000	—	10,080,000
(ii) 31-3-1978	1,120,000	642,419	1,762,419
(iii) 31-3-1979	1,120,000	268,800	1,388,800
(iv) 31-3-1980	1,120,000	179,200	1,299,200
(v) 31-3-1981	1,120,000	89,600	1,209,600

Explanation.—In this Schedule “dollar” means the unit of currency in the United States of America.

FAKHRUDDIN ALI AHMED,
President.

K. K. SUNDARAM,
Secy. to the Govt. of India.

